

**Exhibit 3 to Mr. Englade's Declaration**



901 Kilbourn Avenue, P.O. Box 349  
Tomah, Wisconsin 54660  
608/372-4151

February 15, 1989

Marvin McNeal  
Larry Piumbroeck  
John Cusack  
Colleen Dziuban  
John Klarer  
Ed Neckvatal  
Dick Kiesling  
James Hawkins  
Charles Metcalf  
Robert Gens  
Don Hammer  
Bill Dollard  
Roy Manke  
Robert Gens  
Fred Englade  
Mike Mott

Viroqua Telephone Company  
United States Cellular  
Ameritech Mobile Communications  
GTE Mobilnet  
Mount Horeb Telephone Company  
Farmers Telephone Company  
Cuba City/Belmont Telephone Company  
Vernon Telephone Coop  
UTELCO  
Richland-Grant Telephone Coop  
Hillsboro Telephone Company  
Universal  
Coon Valley Farmers Telephone  
LaValle Telephone  
Century Telephone  
Contel

Dear RSA 8 Participants:

Enclosed for your review are drafts of the proposed Wisconsin RSA 8 Settlement Agreement and the Agreement establishing Wisconsin RSA 8 Partnership. These documents are the result of discussions at our February 8 meeting in Viroqua.

We need to have each participant review these documents and forward to me any proposed changes as soon as possible. Comments and proposed changes to the Settlement Agreement should be received by me no later than Thursday, February 24. Suggested changes to the Partnership Agreement should be in my hands no later than Tuesday, February 28. Since there is so little time left, we must adhere to these tight schedules. You can reach me by telephone at (608) 372-8130, and by fax at (608) 372-3478.

Very truly yours,

David C. Thurow  
Chairman, RSA 8

bb

Enclosures

**Exhibit 4 to Mr. Englade's Declaration**

**DUPP**



NORTH-WEST  
CELLULAR, INC.

901 Kilbourn Avenue, P.O. Box 349  
Tomah, Wisconsin 54660  
608/372-4151

February 28, 1989

Mr. Ed Towers  
Telephone & Data Systems  
79 W. Monroe Street  
Chicago, IL 60603

Dear Ed:

Please review the enclosed drafts of the Settlement Agreement and Partnership Agreement for Wisconsin RSA 8. I had sent copies to your St. Paul office a week and a half ago, but they apparently were not received. Because of this delay, I would ask that you complete your review and give me back your comments by Friday, March 3, so that there is sufficient time to complete the process before the lottery.

Please call me at (608) 372-8130 if there are any questions in this regard.

Very truly yours,

David C. Thurow, P.E.  
Manager-Engineering Services

bb

Enclosures

copy: Byron Wirtz (w/enclosures)

**Attachment B to Petition**

**FCC Form 430**

FCC  
430

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Approved By OME  
3060-0105  
Expires 3/31/87

COMMON CARRIER AND SATELLITE RADIO LICENSEE QUALIFICATION REPORT

INSTRUCTIONS

- A. The "Filer" of this report is defined to include: (1) An applicant, where this report is submitted in connection with applications for common carrier and satellite radio authority as required for such applications; or (2) A licensee or permittee, where this report is required by the Commission's Rules to be submitted on an annual basis.
- B. Submit an original and one copy (sign original only) to the Federal Communications Commission, Washington, D.C. 20554. If more than one radio service is listed in item 6, submit an additional copy for each such additional service. If this report is being submitted in connection with an application for radio authority, attach it to that application.
- C. Do not submit a fee with this report.

<b>1. Business Name and Address (Number, Street, City, State and ZIP Code) of Filer's Principal Office:</b> United Telequipment Corporation (Formerly United Telephone Company) P.O. Box 88, 827 - 16th Avenue Monroe, Wisconsin 53566		<b>2. (Area Code) Telephone Number</b> (608) 328-5252
<b>3. If this report supercedes a previously filed report, specify its date:</b> March 30, 1987		
<b>4. Filer is (check one):</b> <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other (Specify):		<b>5. Under the laws of what State (or other jurisdiction) is the Filer organized?</b> Wisconsin
<b>6. List the common carrier and satellite radio services in which Filer has applied or is a current licensee or permittee:</b> Public Land Mobile Radio Service Rural Radio Service		
<b>7(a) Has the Filer or any party to this application had any FCC station license or permit revoked or had any application for permit, license or renewal denied by this Commission?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "YES," attach as Exhibit I, a statement giving call sign and file number of license or permit revoked and relating circumstances.		
<b>(b) Has any court finally adjudged the Filer, or any person directly or indirectly controlling the Filer, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or other means of unfair methods of competition?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "YES," attach as Exhibit II a statement relating the facts.		
<b>(c) Has the Filer, or any party to this application, or any person directly or indirectly controlling the Filer ever been convicted of a felony by any state or Federal Court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "YES," attach as Exhibit III a statement relating the facts.		
<b>(d) Is the Filer, or any person directly or indirectly controlling the Filer, presently a party in any matter referred to in items 7(b) and 7(c)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "YES," attach as Exhibit IV a statement relating the facts.		
<b>8. Is the Filer, directly or indirectly, through stock ownership, contract or otherwise, currently interested in the ownership or control of any other radio stations licensed by this Commission?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "YES" submit as Exhibit V, the name of each such licensee and the licensee's relation to the Filer. See Exhibit V attached.		
<b>If Filer is an individual (sole proprietorship) or partnership, answer the following and Item 11: DNA</b>		
<b>9(a) Full Legal Name and Residential Address (Number, Street, City, State and ZIP Code) of Individual or Partners:</b>	<b>(b) Is individual or each member of a partnership a citizen of the United States?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	<b>(c) Is individual or any member of a partnership a representative of an alien or of a foreign government?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	

If Filer is a corporation, answer the following and Item 11:

10(a) Attach as Exhibit VI, the names, addresses, and citizenship of those stockholders owning of record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries.

See Exhibit VI attached.

(b) List below, or attach in Exhibit VII, the names and addresses of the officers and directors of the Filer.

See Exhibit VII attached.

(c) Is the Filer directly or indirectly controlled by any other corporation?

☒ Yes ☐ No

If "YES," attach as Exhibit VIII a statement (including organizational diagrams where appropriate) which fully and completely identifies the nature and extent of control. Include the following: (1) the address and primary business of the controlling corporation and any intermediate subsidiaries; (2) the names, addresses, and citizenship of those stockholders holding 10 percent or more of the controlling corporation's voting stock; (3) the approximate percentage of total voting stock held by each such stockholder; and (4) the names and addresses of the president and directors of the controlling corporation.

See Exhibit VIII attached.

(d) Is any officer or director of the Filer an alien?

☐ Yes ☒ No

(e) Is more than one-fifth of the capital stock of the Filer owned of record or voted by aliens or their representatives, or by a foreign government or representatives thereof, or by a corporation organized under the laws of a foreign country?

☐ Yes ☒ No

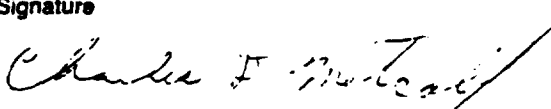
(f) Is the Filer directly or indirectly controlled: (1) by any other corporation of which any officer or more than one-fourth of the directors are aliens, or (2) by any foreign corporation or corporation of which more than one-fourth of the capital stock is owned or voted by aliens or their representatives, or by a foreign government or representatives thereof.

☐ Yes ☒ No

(g) If any answer to questions (d), (e) or (f) is "YES," attach as Exhibit IX a statement identifying the aliens or foreign entities, their nationality, their relationship to the Filer, and the percentage of stock they own or vote.

#### 11. CERTIFICATION

This report constitutes a material part of any application which cross-references it, and all statements made in the attached exhibits are a material part hereof. The ownership information contained in this report does not constitute an application for, or Commission approval of, any transfer of control or assignment of radio facilities. The undersigned, individually and for the Filer, hereby certifies that the statements made herein are true, complete and correct to the best of Filer's knowledge and belief, and are made in good faith.

<b>WILLFUL FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE BY FINE AND IMPRISONMENT [U.S. Code, Title 18, Section 1001] AND/ OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT [U.S. Code, Title 47, Section 312(a)(1)]</b>	Date	Filer (Must correspond with that shown in Item 1).	Typed or Printed Name
	03-14-88	United Telequipment Corporation (Formerly United Telephone Company)	Charles D. Metcalf
	Signature		Title
			Vice President & General Manager

#### NOTICE TO INDIVIDUALS REQUIRED BY PRIVACY ACT OF 1974 AND THE PAPERWORK REDUCTION ACT OF 1980

The solicitation of personal information requested in this form is to determine if you are qualified to become or remain a licensee in a common carrier or satellite radio service pursuant to the Communications Act of 1934, as amended. No authorization can be granted unless all information requested is provided. Response is required to obtain the requested authorization or retain an authorization.

EXHIBIT V

Filer is also the licensee of one station in the General Mobile  
Radio Service.



EXHIBIT VI

All stock is held by Monroe Communications Corporation.

EXHIBIT VII

Robert A. Kirschner	President, Director	301 S. Westfield Road P.O. Box 5158 Madison, Wisconsin 53705
Charles D. Metcalf	Vice President and General Manager, Director	827 16th Avenue P.O. Box 88 Monroe, Wisconsin 53566
Charles J. Schroeder	Secretary, Director	301 S. Westfield Road P.O. Box 5426 Madison, Wisconsin 53705
Thomas P. Larson	Treasurer, Director	301 S. Westfield Road P.O. Box 5426 Madison, Wisconsin 53705
Theresa A. Engen	Assistant Secretary	827 16th Avenue P.O. Box 88 Monroe, Wisconsin 53566
David W. Esser	Director	301 S. Westfield Road P.O. Box 5426 Madison, Wisconsin 53705
Robert L. Ableman	Director	1925 25th Street Monroe, Wisconsin 53566
Robert H. Rieder	Director	2023 13th Street Monroe, Wisconsin 53566

EXHIBIT VIII

- (1) Monroe Communications Corporation  
301 S. Westfield Road  
P.O. Box 5158  
Madison, Wisconsin 53705  
Telecommunications  
Holding Company
- (2) Telephone and Data Systems, Inc.  
79 West Monroe Street, Suite 905  
Chicago, Illinois 60603
- (3) 49% (No individual owns 10% or more of voting stock)
- (4) Monroe Communications Corporation:
- |  |          |  |
|--|----------|--|
| Robert A. Kirschner, President<br>& Treasurer          | Director | 301 S. Westfield Road<br>P.O. Box 5158<br>Madison, Wisconsin 53705 |
| Merling L. Haugestuen<br>Vice President<br>& Secretary | Director | P.O. Box 164<br>Dallas, Wisconsin 54733                            |
| Mark T. Ehrmann, Assistant Secretary                   |          | 69 W. Washington Street<br>Suite 3200<br>Chicago, Illinois 60602   |



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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 26 1989

In the Matter of )

Application of Telephone )  
and Data Systems, Inc. To )  
Establish A New System In )  
The DPCRTS To Provide Service )  
In Wisconsin RSA #8 - Vernon )

Federal Communications Commission  
Office of the Secretary  
File No. 10209-CL-P-715-B-88

TABLE OF CONTENTS AND SUMMARY  
OF REPLY TO PETITION TO DENY

Telephone and Data Systems, Inc. ("TDS") hereby files a Table of Contents and Summary of its attached "Reply" in the above-captioned proceeding.

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### Summary

The wireline lottery for Wisconsin RSA #8 was held on March 15, 1989 and was won by TDS. TDS was not a signatory to any settlement agreement for that RSA. TDS subsequently filed all necessary amendments and was designated as tentative selectee.

Century Cellunet, Inc. ("Century") has filed a Petition To Dismiss or Deny TDS's application, alleging that TDS has acquired a cross interest in the application of Century and nine other applicants in Wisconsin RSA #8 in violation of Section 22.922(b)(1) of the Rules and has failed to report that interest in violation of Section 1.65 of the Rules. TDS's alleged interest arises from the fact that Century and the other members of its settlement group admitted into their group UTELCO, Inc., a local exchange carrier in Wisconsin RSA #8 which did not file an application for that RSA, and in which TDS holds a 49% minority interest.

TDS has no such prohibited cross-interests. First, settlement agreements do not create the type of "ownership interests" which are subject to Section 22.921(b)(1). Rather, that Section has only been interpreted to ban certain cross-ownership interests among initial applicants. Accordingly, TDS did not acquire any "interest" cognizable under Section 22.921(b)(1) arising out of the action of Century, the other members of the settlement group, and UTELCO in entering into their settlement agreement.

Second, the FCC has consistently held that lottery winners are not in any way subject to settlement agreements unless the lottery winner chooses to amend its own application to substitute an entity formed as a consequence of the settlement agreement as the appli-

cant. TDS is not a party to the settlement agreement and obviously will file no such amendment.

Third, before imposing the draconian sanction of application dismissal, due process and fundamental fairness require that the standard prescribed by a Commission rule be clear and readily ascertainable. TDS's application cannot be dismissed for violating Section 22.922(b)(1) when that rule has never been interpreted to apply to "interests" created by settlement agreements, let alone a settlement agreement between applicants and a non-applicant in which a non-settling applicant has a minority interest.

Fourth, the settlement agreement, by its terms, is not yet operative and therefore cannot create rights and obligations on the part of its signatories, let alone non-parties.

Finally, since the settlement agreement imposed neither duties nor obligations on TDS, and did not change the information in TDS's application, TDS was not required to report its existence.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Telephone	)	File No. 10209-CL-P-715-B-88
and Data Systems, Inc. To	)	
Establish A New System In	)	
The DPCRTS To Provide Service	)	
In Wisconsin RSA #8 - Vernon	)	

REPLY TO PETITION  
TO DISMISS OR DENY

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files its Reply to the "Petition To Dismiss Or Deny" its above-captioned application filed by Century Cellunet, Inc. ("Century").

Factual Background

Applications for Wisconsin RSA #8 were filed between August 31 and September 2, 1988. There were thirteen wireline applications filed, including those of TDS and Century. See Public Notice, Mimeo 1297, released January 19, 1989, Addendum, Mimeo 1890, released March 7, 1989.

According to the evidence presented in the Petition, ten of the wireline applicants in Wisconsin RSA #8 signed a settlement agreement prior to the lottery. Applicants TDS, Ameritech Mobile Communications, Inc., and GTE Mobilnet, Incorporated did not sign the settlement agreement. On February 8, 1989, according to affidavits and meeting minutes submitted by Century, members of the settlement group for Wisconsin RSA #8 met and agreed to permit four



local exchange carriers with "presence" in the RSA which had not filed applications to join the settlement group and participate in the entity which would later be created, as a consequence of the settlement agreement, to hold the construction permit, assuming one of the applicant signatories won the lottery. One of those carriers was UTELCO, Inc. ("UTELCO"), a company in which TDS holds a 49% interest. UTELCO later signed the settlement agreement, evidently prior to the lottery, though neither its signature nor the agreement itself, as submitted by Century, is dated.

The wireline lottery for Wisconsin RSA #8 was held on March 15, 1989, and was won by TDS. See Report No. CL-89-107, released March 16, 1989. TDS filed an amendment pursuant to Section 1.65 of the Commission's Rules on April 17, 1989, and was designated as tentative selectee in the RSA on June 9, 1989. See Report No. CL-89-174. On June 29, 1989, TDS filed its required financial showing and an additional Section 1.65 amendment. On July 27, 1989, Century (and only Century) filed the instant Petition.

Century makes two arguments: That TDS, the wireline lottery winner and tentative selectee in Wisconsin RSA #8 - Vernon, (1) has a prohibited cross-ownership interest in more than one application in that RSA owing to UTELCO's entering into the settlement agreement, in violation of Section 22.921(b) of the Commission's Rules, and (2) has failed to disclose that interest in violation of Section 1.65 of the Commission's Rules.

As will be shown below, both of these arguments are incorrect, and the TDS application should be granted.

I. TDS Has Not Violated Section  
22.921(b)(1) of the Commission's Rules

Section 22.921(b)(1) of the FCC's Rules provides, in pertinent part, that:

"No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered. (Emphasis added)."

As is acknowledged by Century (Petition, p. 4), TDS filed an application to serve Wisconsin RSA #8 and UTELCO did not file an application for that RSA. Nor does Century maintain that TDS had any interest in any other wireline applicant in Wisconsin RSA #8 when the applications were filed. Rather, Century argues (Petition, pp. 4-5), that because non-applicant UTELCO signed a post-filing settlement agreement with certain applicants in the RSA, including Century, TDS thereby acquired a derivative pro rata 3.5% interest in the applications of each of the participants in the settlement agreement, as well as maintaining a 100% interest in its own application. Century contends that therefore TDS is now in violation of Section 22.921(b)(1) and its application should be dismissed. As we show below, this contention is entirely incorrect.

The basic context in which this case arises derives from the Commission's policy favoring wireline settlement agreements. From the beginning, the Commission has repeatedly and consistently held that pre and post filing settlement agreements among wireline applicants, in MSAs and RSAs, serve the public interest and are

encouraged.<sup>1</sup> Indeed, the policy favoring settlements was a decisional factor in the Commission's decision to retain the wireline set-aside when the Commission adopted cellular lotteries.<sup>2</sup> Section 22.922(b)(1), the FCC's cellular cross interest rule, has been in existence since 1984,<sup>3</sup> that is, during the period when the Commission has encouraged and implemented wireline settlement agreements, and the Commission has never held or implied that pre-lottery wireline settlement agreements create the type of "ownership interests" which Section 22.921(b)(1) was intended to cover.

If settlement agreements had been considered to create the type of interests which are subject to Section 22.921(b)(1), then that rule would necessarily have had an exception to permit settlement-created "interests," since such interests are favored by the Commission. But there is no such exception for cross interests under Section 22.921, as there is for "major changes" in ownership under Section 22.23.<sup>4</sup> Consequently, "interests" created by settle-

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<sup>1</sup> See, e.g., Cellular Communications Systems (Cellular Reconsideration Order), 89 FCC 2d 58, 76 (1982); Cellular Lottery Order, 56 R.R. 2d 8, 27 (1984); Cellular Radio Lotteries (Order on Reconsideration), 101 FCC 2d 577, 588 (1985); Cellular Service (Settlements and Changes of Ownership), 59 R.R. 2d 1450 (C.C. Bur. 1986); Rural Cellular Service (Third Report and Order), 64 R.R. 2d 1383, 1386 (1988); Rural Cellular Service, 64 R.R. 2d 1637 (C.C. Bur. 1988).

<sup>2</sup> Cellular Lottery Order, 56 R.R. 2d, at 24.

<sup>3</sup> See Cellular Lottery Order, 56 R.R. 8, 38-39 (1984).

<sup>4</sup> Generally, major changes in the ownership of applicants cause their applications to be treated as "newly filed," and therefore subject to dismissal if the change in ownership post-dates the filing deadline. See Sections 22.23(c)(4) and 22.23(g) of the Commission's Rules.

ment agreements, including UTELCO's "interest" in issue here, are not cross-interests covered by Section 22.921.

Contrary to Century's claim, the Commission has never said that participants in wireline settlement agreements acquire pro rata interests in each other's applications. Indeed, had the Commission done so it would have effectively abolished all wireline partial settlement agreements, since such agreements would then have given all participants in them precisely the cross-interests which are proscribed by Section 22.921(b)(1). Instead, the Commission has repeatedly held that MSA and RSA wireline applicants may enter into pre and post filing settlements without becoming real parties in interest in each other's applications.<sup>5</sup>

Nowhere has the Commission or Common Carrier Bureau held that a violation of Section 22.921(b)(1) may be found as the consequence of any settlement arrangement, whether between applicants, or between applicants and a non-applicant, as is the case here. Century cites no cases or decisions to that effect. The three cases cited by Century in which violations of Section 22.921(b)(1) were found to exist all involved forbidden cross-interests among

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However, in 1984 an exception was created by Section 22.23(g)(4) to permit "major changes" caused by settlement agreements to be made without treating the applications as "newly filed."

<sup>5</sup> See Rural Cellular Service, supra, 64 R.R. 2d, at 1637-38.

initial applicants.<sup>6</sup> The cases have nothing whatever to do with interests created by settlement agreements.

What Century has done is to confuse the concept of "cumulative lottery chances," which the Commission and Common Carrier Bureau have repeatedly stated may be obtained by settling wireline applicants in an MSA or RSA, with reciprocal pro rata interests in each other's applications, which the Commission has never said are created by such settlement agreements.

Century appears to be arguing that its own action and that of its fellow signatories to its settlement agreement in admitting UTELCO somehow brought the application of TDS within the ambit of Section 22.921(b)(1). Not only is there, as noted above, no precedent for this strange conclusion, but it is also contrary to the language of Section 22.921(b)(1) and to the dictates of fundamental fairness.

Section 22.921(b)(1), by its terms, forbids any party from holding a forbidden cross interest in more than one application for the same RSA. Applications are of course filed only by applicants. The Rule does not discuss settlement agreements or any interests which may be created by them. Accordingly, it cannot reasonably be construed to include such interests.

Moreover, it is fair and reasonable for the FCC to hold applicants and only applicants responsible for any forbidden cross-

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<sup>6</sup> MV Cellular, Inc., 103 FCC 2d 414, 418-20 (1986); Portland Cellular Partnership, 2 FCC Rcd 5586, 5587, (MSD 1987) aff'd 4 FCC Rcd 2050 (FCC) (1989); and Henry County Telephone Company, et al. Mimeo No. 2747 (C.C. Bur., released February 21, 1986).

interests that may exist among them. All applicants are on notice about what the rules require, and can take whatever steps are necessary to comply with the Rules. However, it is not comparably fair or reasonable to hold an applicant responsible for a settlement agreement reached by a non-applicant company, including one in which the applicant may have a minority ownership position, with other applicants.

As noted above, the FCC has never said or even intimated that Section 22.921(b)(1) was intended to cover the interests created by settlement agreements, let alone interests arguably created by the actions of non-applicants signing such agreements. Before imposing the draconian sanction of dismissal, which is what Century seeks in this case, due process and fundamental fairness require that the standard prescribed by a Commission rule be clear and readily ascertainable. See Radio Athens, Inc. (WATH) v. FCC, 401 F. 2d 398, 404 (D.C. Cir. 1968) (FCC dismissal of radio station application reversed when the application of the broadcast cross-ownership rule to applicant was ambiguous); Salzer v. FCC, 778 F. 2d 869,875 (D.C. Cir. 1985) (FCC dismissal of LPTV applications reversed when standard for application acceptance was unclear); Maxcell Telecom Plus, Inc. v. FCC, 815 F. 2d 1551, 1560 (D.C. Cir. 1987) (FCC provided insufficient notice of filing requirements before dismissing cellular "fill in" application). The requirements of Section 22.921(b)(1) would certainly not have met the required standard of clarity if TDS were now held to have violated the rule.

On February 8, 1989, the applicant signatories to the Wisconsin RSA #8 settlement agreement chose to admit four non-applicants, including UTELCO, as signatories to the agreement (Exhibit 2 to Englade Affidavit attached to Petition). They did this with full knowledge of UTELCO's partial ownership by TDS (Englade Affidavit, p. 2). TDS chose not to sign the settlement agreement, a fact of which the signatories to the agreement were obviously aware well before the lottery.<sup>7</sup> At no time before the lottery did the signatories seek to expel UTELCO from the settlement group or indicate that its participation in the group was improper. Had one of the settlement group members won the lottery, UTELCO would evidently have been a member of the proposed permittee partnership.

However, a signatory to the settlement agreement did not win the lottery, and evidently lacking any other weapon to strike at the lottery winner, Century seeks to use an agreement to which it is a party and TDS is not, and with which it previously found no fault, to attack TDS.

Century is attempting to entangle TDS with Century's settlement agreement. Nothing in the FCC's rules or policies permits it to do so. Indeed, the FCC has consistently held that lottery winners are not in any way subject to settlement agreements, even agreements the lottery winner has signed, unless the lottery winner chooses to amend its own application to substitute an entity formed

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In the letter from David C. Thurow to Edward Towers of TDS, dated February 28, 1989, TDS is urgently requested to complete its final review of the proposed settlement agreement by March 3, 1989. The lottery took place on March 15, 1989.

as a consequence of the settlement agreement as the applicant. See American Cellular Network Corp. of Nevada, 63 R.R. 2d 1313 (1987). TDS is a fortiori free to refuse Century's poisoned "gift" of an interest in the applications of the settlement group members in this case.

Finally, it should be noted that the Wisconsin RSA #8 settlement agreement, by its terms, is not yet operative and therefore cannot create rights or obligations for its signatories, let alone non-parties to it.

Section 6(a) of the Agreement provides, in pertinent part:

"Within seven days following the FCC's announcement of the lottery results..., the lottery winner shall file with the FCC the paper original and two hard copies of its application."

Section 6(c) provides:

"In the event a full settlement is not reached in the RSA and a lottery is held, each Party agrees that, in the event this agreement is approved by the FCC, if such approval is required, and the application of a Party to this agreement is selected by the FCC, said Party shall assign its right in the construction permit to the Partnership, contemplated hereby, and other parties to this agreement shall not pursue their applications or take any action to dismissal of an application of any other Party to this agreement."

Thus, if a full settlement in the RSA was not reached, as it was not, the triggering event giving rise to the parties' obligations and rights under the agreement was a victory by one of them in the lottery. In the absence of that, the agreement was of no force and effect, for it created no filing obligations on the part of a lottery winner and thus no right to acquire ownership inter-



ests in the eventual permittee on the part of the other signatories.

Century ignores the fact that the lottery was not won by a party to the agreement and asserts, in essence, that although the agreement is not operative and that none of the parties to the agreement yet have any duties to perform under it, that TDS, a non-party, has somehow gained interests in other applications through the operation of the agreement sufficient to cause TDS's own application to violate the rules. Such reasoning is self-serving and specious.

Century's argument that TDS has somehow acquired interests in other applications which result in a violation of Section 22.921(b)(1) is not supported by precedent, logic or fairness. It should be rejected.

II. TDS Had No Obligations Under Section 1.65  
Of The Commission's Rules To Report  
UTELCO's Entering The Settlement Agreement

Section 1.65 of the Commission's Rules provides, in pertinent part:

"Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application...[W]henver the information furnished in the pending application is no longer accurate in all significant respects, the applicant shall...amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate..."

TDS has twice amended its application subsequent to the lottery, pursuant to Section 1.65 of the Rules, to apprise the Commission of minor changes in the ownership information previously supplied and of changes in TDS's subsidiaries and affiliates. As